

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 129/AIL/Lab./J/2011, dated 5th July 2011)

NOTIFICATION

Whereas, the Award in I.D.No.13/2008, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Anglo-French Textiles, Puducherry and Thiru R. Sadasivam over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS. M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

*Monday, the 31st day of January 2011***I.D. No. 13/2008**

R. Sadhasivam ..	Petitioner
<i>Verses</i>	

The Managing Director, Anglo-French Textiles, Pondicherry. ..	Respondent
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This industrial dispute coming on 27-1-2011 for final hearing before me in the presence of Thiru T. Gunasegaran, advocate for the petitioner and Thiru B. Mohandass, advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.91/AIL/Lab/J/2008 dated 6-6-2008 for adjudicating the following:-

(1) Whether the dispute raised by Thiru R. Sadasivam against the management of Anglo-French Textiles, Puducherry over his non-employment is justified or not?

(2) To what relief Thiru R. Sadasivam is entitled to?

(3) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner was working as an employee in the respondent mill in Printing Section of Dye House Department for past several years. On 5-2-2004 during the day shift, the petitioner mixed several chemicals and colours and at that time chemical gas was formed and it attacked him and he became unconscious and his mind was also affected. This is an accident, which happened within the premises of the respondent mill and it has to be recorded as accident. Unfortunately the management employees have not done so.

One of the co-employees brought the petitioner to the mill dispensary and the mill doctor referred him to Psychiatric Department, General Hospital, Pondicherry and he got treatment there and also in ESI Hospital. The petitioner got medical treatment for more than six months with medical leave and now the petitioner was shifted to some other category.

In the meanwhile the respondent management of AFT has given a suspension notice to the petitioner by stating that he has stolen some cloth from the respondent mill on 5-2-2004. Since he was active in trade union activities, the management has suspended him by saying false allegation against him. The domestic enquiry conducted by the respondent management was not fair and proper and he was not given fair opportunity to defend the above charge. The respondent management insisted with the help of some vested interest forced the petitioner to give resignation letter and finally they obtained his signature in a resignation letter prepared by some employees in a hurried manner. Hence, this industrial dispute is filed to reinstate the petitioner into service.

3. In the counter statement, the respondent has stated as follows:

It is true that the petitioner was an employee of the respondent mills, the petitioner was issued a charge sheet, dated 5-2-2004 for committing theft of mill property and he was placed under suspension pending enquiry. The petitioner initially submitted a letter, dated 12-2-2004 denying the charges. Subsequently he submitted a letter, dated 17-2-2004 accepting the fact that the mill cloth found under his pant was taken away by him and stated that he committed the misconduct due to family reasons.

A domestic enquiry was conducted and the petitioner was given fair chance to defend him. The petitioner participated in the enquiry and in the enquiry proceedings, the petitioner submitted a letter, dated 26-2-2004 admitting the commission of misconduct of theft which was recorded in the enquiry proceedings. The Enquiry Officer in his findings dated 3-3-2004 has held the worker to be guilty of the charges framed. In the meanwhile, fearing, major penalty for grave misconduct of theft, the petitioner submitted a letter, dated 28-2-2004 admitting his guilt and requesting the respondent management to accept his resignation and settle his terminal benefits *in lieu* of further disciplinary action for the proved misconduct. On considering the application of the petitioner, the petitioner was relieved from service through letter, dated 18-3-2004 and settled his terminal benefits. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, the petitioner was examined as P.W.1 and P.W.2 and Ex.P1 to Ex.P8 were marked. On the side of the respondent, no oral evidence was adduced and Ex.R1 to Ex.R22 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. On the point:

The contention of the petitioner is that he was working as an employee in the respondent mill and since he was very active in trade union activities, he was issued with the suspension notice by saying false allegation that he committed theft of cloth from the mill and subsequently he was relieved from the service by forcibly obtained a resignation letter from him.

7. *Per contra*, the contention of the respondent is that the petitioner committed theft of cloth from the mill and he was caught red handed by Security Guard and the domestic enquiry was conducted and during the enquiry proceedings, he admitted his guilt by submitting a letter, dated 26-2-2004 and subsequently he submitted a letter dated 28-2-2004 requesting the respondent management to accept his resignation and based on the said resignation letter, instead of dismissing him from service, he was relieved from service by settling terminal benefits.

8. In order to prove his case, the petitioner was examined himself as PW.1. PW.1 in his evidence has stated that he was working in the respondent mill for

several years in Printing Section of Dye House Department and on 5-2-2004 during the day shift, he mixed several chemicals and colours and at that time, the chemical gas was formed and the same was attacked him and he became unconscious and the said incident was happened while he was on duty and hence the same has to be recorded as accident, but the respondent employees has done so. PW.1 further stated that he was taken to Mill Dispensary, from where he was referred to Psychiatric Department, General Hospital, Pondicherry. In order to prove his claim, PW.1 has marked the OPD slip issued by Mill Dispensary as Ex.P1. A perusal of Ex.P1 reveals that the petitioner took treatment at the Mill Dispensary and from where he was referred to General Hospital, Pondicherry for further treatment. Ex.P2 is the OPD slips, issued by General Hospital, Pondicherry, which would show that PW.1 took treatment at General Hospital, Pondicherry on various dates. Ex.P3 is the leave certificate issued by E.S.I. authorities for taking treatment at E.S.I. Hospital.

9. On the side of the petitioner, his co-employee by name Alexander was examined as PW.2. PW.2 has corroborated the evidence of PW.1. He further stated that the petitioner got medical treatment for more than six months with medical leave and it is usual for the employees to meet chemical accident during the course of employment at the dying and printing department. The evidence of PWs.1 and 2 would clearly prove that there was an accident on 5-2-2004 in which the petitioner was affected with the chemical gases and for which, he took treatment in General Hospital, Pondicherry and E.S.I. Hospital, Pondicherry for more than six months by taking medical leave, which was granted by the E.S.I. authorities.

10. On the side of the respondent, the learned counsel for the respondent would submit that the petitioner was apprehended by the mill Security at the workers main gate at about 11.30 a.m. on 5-2-2004 while he was trying to pilfer pink colour cloth of about 169 cms. in length and 220 cms. in breadth costing about ₹ 112 wrapped under his pant and immediately on seeing that, the security persons submitted a complaint to the respondent management and the petitioner made a statement in writing on 5-2-2004 itself admitting the commission of misconduct and tendering apology. The learned counsel for the respondent would further submit that the petitioner initially submitted a letter, dated 12-2-2004 denying the charges, subsequently, he submitted a letter, dated 17-2-2004 accepting the fact and hence a domestic enquiry was conducted and the Enquiry Officer found the petitioner guilty. The learned

counsel for the respondent would further submit that the petitioner submitted a letter, dated 28-2-2004 admitting his guilty and requesting the respondent management to accept his resignation and settle his terminal benefits and the respondent management accepted his resignation and relieved him from service.

11. In order to prove his contention, on the side of the respondent, Ex.R1 to Ex.R22 were marked. Ex.R1 is the letter submitted by the petitioner to the respondent management admitting about commission of the theft of cloth. Ex.R2, Ex.R3 and Ex.R4 are the complaints given by the Security Guards to the Security Officer about commission of theft by the petitioner. Ex.R5 is the complaint given by the Security Officer to the respondent management for taking action against the petitioner. A perusal of Ex.R1 to Ex.R5 reveals that on 5-2-2004 the petitioner committed theft of cloth belonging to the respondent mill, which was wrapped in his pant and he was caught red handed by the Security Guards.

12. The learned counsel for the petitioner would submit that the domestic enquiry conducted by the respondent was partial and biased and during the proceedings of the domestic enquiry, the petitioner was not given a fair opportunity to represent his side.

13. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the delinquent and conducting the domestic enquiry by a neutral Inquiry Officer. During the course of enquiry, the petitioner admitted the offence.

14. At this stage when we peruse the domestic enquiry proceedings, Ex.R8 relating to the petitioner, we can understand that the petitioner has participated in the enquiry and during the course of enquiry, he admitted his offence and requested the Enquiry Officer to close the enquiry. A perusal of Ex.R8 and Ex.R11 further reveals that the petitioner has submitted a letter admitting the offence and requested the respondent management to treat the said letter as his resignation letter and relieve him from service. Ex.R9 and Ex.R10 are the apology letter submitted by the petitioner, wherein he admitted the offence and tendered apology. These documents are not challenged by the petitioner. Hence, the contention of the petitioner that he was forced to obtain the resignation letter by the respondent management cannot be accepted.

15. On the side of the respondent, the enquiry report submitted by the Enquiry Officer was marked as Ex.R12, wherein the Enquiry Officer found the petitioner guilty

of the offence. Since the petitioner has admitted his offence and requested the respondent management to relieve him from service, they relieved the petitioner from the service *vide* letter, dated 18-3-2004, which has been marked as Ex.R13.

16. Consequent to relieve him from service, the petitioner received his gratuity amount of ₹ 83,863 in full and final settlement on 19-5-2004 and ₹ 47,851 towards other benefits as could be seen from the petitioners own documents under Ex.P5 and Ex.P6. Hence, the respondent has properly conducted the domestic enquiry and as the petitioner admitted the offence, the respondent admitted his request on humanitarian ground and accepted his resignation and relieved him from service, though the charges levelled against him was proved. Therefore, this court comes to the conclusion that the petitioner has been relieved from his service based on his own resignation letter submitted by him and the respondent has not violated the principles of natural justice.

17. As stated earlier, the petitioner has proved the accident, which he has met during the course of his employment, for which a monetary compensation has to be paid to him. Accordingly, this point is answered.

18. In the result, the petitioner is not entitled for reinstatement and back wages. However, the respondent is directed to pay a sum of ₹ 40,000 to the petitioner towards the monetary compensation. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner:

PW1 — 29-9-2010—Sadhavam.

PW2 — 17-8-2010—Alexander.

List of witnesses examined for the respondent: Nil

List of exhibits marked for the petitioner:

Ex.P1 — OPD slips issued by Mill Dispensary

Ex.P2 — OPD slips issued by G.H., Pondicherry

Ex.P3 — Medical leave granted by E.S.I. Corporation

Ex.P4 — Copy of benefit payment slip

Ex.P5 — Notice of payment of gratuity,
dated 18-5-2004.

Ex.P6 — Receipt for recovery of DFT dated 19-5-2004.
Ex.P7 — Copy of payment slip, UCO Bank, Pondicherry.
Ex.P8 — Savings bank book of the petitioner
<i>List of exhibits marked for the respondent:</i>
Ex.R1 — Letter, dated 5-2-2004 by the petitioner to the respondent.
Ex.R2 — Letter, dated 5-2-2004 from the Security Guard Thanganath Sharma.
Ex.R3 — Letter, dated .5-2-2004 from the Security Guard Chelladurai.
Ex.R4 — Letter, dated 5-2-2004 from Supervisor Govindasamy to Security Officer.
Ex.R5 — Complaint, dated 5-2-2004 sent by the Security Officer.
Ex.R6 — Charge sheet, dated 5-2-2004 sent to the petitioner.
Ex.R7 — Enquiry notice, dated 12-2-2004 sent by the respondent.
Ex.R8 — Enquiry proceedings, dated 17-2-2004 and 29-2-2004.
Ex.R9 — Letter, dated 17-2-2004 from the petitioner
Ex.R10 — Letter, dated 26-2-2004 from the petitioner
Ex.R11 — Resignation, letter by the petitioner, dated 28-2-2004.
Ex.R12 — Enquiry report, dated .3-3-2004
Ex.R13 — Letter, dated 18-3-2004 from the respondent
Ex.R14 — Grievance leaflet published by the petitioner.
Ex.R15 — Letter, dated 1-11-2005 by petitioner to the Labour Officer.
Ex.R16 — Reply, dated 15-11-2006 by the respondent
Ex.R17 — Re-joinder dated 6-3-2007 by the petitioner to the Labour Officer.
Ex.R18 — Letter, dated 4-4-2007 submitted by the petitioner to the Labour Officer.
Ex.R19 — Failure report of the conciliation proceedings, dated 13-3-2008.
Ex.R20 — Charge sheet, dated 13-10-2009 given by the respondent.
Ex.R21 — Enquiry proceedings, dated 19-10-2009
Ex.R22 — Letter, dated 7-12-2009 sent by the respondent

T. MOHANDASS
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 130/AI/Lab./J/2011, dated 5th July 2011)

NOTIFICATION

Whereas, the Award in I.D.No.17/2004, dated 27-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pondicherry Spinners Limited, Puducherry and Thiru S. Sakthivel over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 27th day of January 2011

I.D. No. 17/2004

Sakthivel, S/o. Sengulathan,
2, Main Road, Eripakkam,
Nettapakkam Commune,
Pondicherry. . . Petitioner

Versus

Pondicherry Spinners Limited,
Siruvanthadu Road,
Madukarai, Pondicherry. . . Respondent

This industrial dispute coming on 24-1-2011 for final hearing before me in the presence of Thiru R. Mugundhan, advocate for the petitioner and Thiru A.V. Ramalingam, advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.53/2004/Lab./AIL/J, dated 23-3-2004 for adjudicating the following:-

(1) Whether the non-employment of Thiru S. Sakthivel against the management of M/s. Pondicherry Spinners Limited, Pondicherry is justified or not?

(2) To what relief, he is entitled to?

(3) To compute the relief, if any, awarded in terms of money if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner has joined the service of the respondent as Operator on 1-8-1995 and his last drawn wages was ₹ 75 per day and the said wage was paid on monthly basis. During November 2002, he went on leave for ten days, since he became ill due to cotton dust. When he was joined duty after completion of the said leave period, he was not given employment. The termination of service of the petitioner amounts to retrenchment within the meaning of section 2(oo) of Industrial Disputes Act, 1947. The petitioner was neither issued any notice nor given any compensation before effecting retrenchment. Further without conducting any domestic enquiry, he was terminated from the service. The respondent management has not followed the procedure laid down for retrenchment under the Industrial Dispute Act. Hence, the retrenchment is illegal and unjustified. Therefore, the industrial dispute, is filed for reinstatement with continuity of service, back wages and other attendant benefits.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was initially joined as Casual Labourer in the year 1995 and from that date of his employment, he was irregular in his employment. The petitioner had unnecessary quarrel with the co-workers and had confrontation and used unparliamentary words with the colleagues. The petitioner was warned for such activities in past, but he could not mend his behaviour. There are also many complaints from the co-workers about the misbehaviour of the petitioner. Further the continuous unauthorised absence was not with sufficient reasons and no proper explanation was received from the petitioner for such absenteeism. Preceding his termination, the petitioner was not in continuous employment and he had just worked for 148 days for the whole year. The unauthorised absence was without any justification and more over no prior

permission was obtained from the management which amounts to unauthorised absence. The dispute was raised nearly after a lapse of 12 months which is not within the stipulated time under the act. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, the petitioner was examined as PW1 and Ex.P1 to Ex.P4 were marked. On the side of the respondent, RW1 was examined and Ex.R1 to Ex.R11 were marked.

5. The point for determination is:

Whether the petitioner can be considered for reinstatement in service with back wages and other benefits?

6. On the point:

The contention of the petitioner is that he was an employee under the respondent company from 1-8-1995 and during the month of November 2002, he went on leave for ten days and when he wanted to join the duty, he was refused employment by the management.

7. *Per contra*, the contention of the respondent is that the petitioner was a Casual Labourer and he was not regular in attending the duty and he was given opportunity by way of notices seeking explanation for his unauthorised absence and in the reply given by the petitioner, he admitted his unauthorised absence. The respondent would further submit that the petitioner made unnecessary quarrel with the co-workers and used unparliamentary words with the colleagues.

8. To prove the contention of the petitioner, he examined himself as PW1 and through him, Ex.P1 to Ex.P4 were marked. Ex.P1 is a copy of the letter sent to the Conciliation Officer dated 11-7-2003. Ex.P2 is the copy of the Failure Report dated 19-12-2003. Ex.P3 is the certificate issued by the respondent company to the petitioner. Ex.P4 is the copy of the E.S.I. slips.

9. On the side of the respondent, RW1 was examined and through him, Ex.R1 to Ex.R11 were marked. In order to prove that the petitioner was a Casual Labourer, the respondent has marked the copy of the Wage Register for the period from September 2001 to October 2002 as Ex.R1 and the copy of Register of Muster Roll as Ex.R2. A perusal of Ex.R1 and Ex.R2 reveals that the petitioner was a Casual Labour under the respondent management and he was getting wages on daily basis. Ex.R1 and Ex.R2 would further reveal that in most of the days, the petitioner was absent.

10. On perusal of records, it is seen that the petitioner has not produced any documentary evidence to show that he went on leave after getting prior permission from the respondent management. The petitioner is an employee under the respondent company and it is for

him to get prior sanction from his employer and then to proceed on leave. In this case, the respondent has not sanctioned any leave to the petitioner.

11. On the side of the respondent, the apology letter submitted by the petitioner was marked as Ex.R4. On perusal of Ex.R4, it is seen that the petitioner has admitted his unauthorised absent and assurance was given to the respondent management that he will not take any leave without getting prior permission from them. Ex.R5 is another apology letter, in which the petitioner has admitted his unauthorised absent and requested the respondent management to join duty. Ex.R10 is the notice issued to the petitioner and some other workers working in the respondent management, informing about their unauthorised absent and calling for explanation about the same. These documents are not challenged by the petitioner and all these documents would clearly prove that the petitioner was unauthorised absent for many days and no reasonable explanation was submitted by him for the same. Hence, this court comes to the conclusion that the petitioner was not regular in attending the work.

12. It is the further contention of the respondent that the petitioner had unnecessary quarrel with the co-workers and had confrontation and used unparliamentary words with the colleagues and he was warned for such activities but he could not mend his behaviour and there are many complaints from the co-workers about the misbehaviour of the petitioner. In order to prove the said contention, the respondent has marked Ex.R6, Ex.R7 and Ex.R8, the complaints given by the workers of the respondent management. On perusal of Ex.R6 to Ex.R8, it is evident that the petitioner has scolded the co-workers in a filthy language in the office hours. Ex.R3 is the show cause notice issued to the petitioner calling for explanation for the misbehaviour of the petitioner. Ex.R9 is the apology letter submitted by the petitioner to the respondent management, admitting his mishaviour in the factory premises and requested the management to join duty. The said documents are also not challenged by the petitioner. Hence, the respondent has proved through the said documents that the petitioner made unnecessary quarrel with the co-workers and used unparliamentary words with the colleagues and for the said act, he was warned.

13. The contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer. He further submitted that the termination of service of the petitioner amounts to retrenchment and the management had not followed the procedure laid down for retrenchment under the Industrial Dispute Act and therefore the retrenchment is illegal and unjustified.

14. On the other hand, the learned counsel for the respondent would submit that there was no retrenchment and since the petitioner was unauthorised absent for many days, he was terminated from his service.

15. It is true that there is no domestic enquiry conducted by the respondent before terminating the service of the petitioner. But as already stated that the respondent has proved the misconduct committed by the petitioner and his unauthorised absent through oral and documentary evidence. Hence, there is no need to conduct the domestic enquiry, as the petitioner himself has admitted his misconduct.

16. Eventhough the petitioner was dismissed by the respondent management on 29-7-2002, this industrial dispute is raised by the petitioner during the year 2004. The petitioner is a poor litigant without any employment. The Labour Courts are established to enforce the rights and privileges of the employees, who are the weaker section of the society. Their rights should not be curtailed or suppressed. At the same time, there should not be unlabour practice on both sides i.e. by employer and employee. When the petitioner is not of a habitual absentee, the punishment imposed by the respondent management is disproportionate. In this regard, it is pertinent to refer the decision, which is relevant to this case:-

2009(III) LLJ 373 (SC) Jagdish Singh Vs. Punjab Engineering College and others:-

"When the Court and Tribunals are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate, the decision of the disciplinary authority can be interfered. Therefore, when the delinquent employee is not of a habitual absentee and seems to have a good track record, and also the alleged misconduct of unauthorised absence is not of gross violation of discipline, the major punishment of dismissal can be interfered"

In this case, the respondent has not raised any serious misconduct prior to the present absenteeism. Hence, the misconduct that is alleged would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. Hence, considering the facts and circumstances of the case, this court inclined to award compensation to meet the ends of justice. The petitioner has joined duty in the respondent management in the year 1995 and dismissed in the year 2002. Considering the continuous service of more than seven years and considering the facts and circumstances of the case and the family conditions of the petitioner, a sum of ₹ 25,000 towards compensation of award can be passed to meet the ends of justice. Accordingly, this point is answered.

17. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement with back wages and other benefits. However, taking into consideration of the facts and circumstances and the family conditions of the petitioner, the respondent is hereby directed to pay the monetary compensation of ₹ 25,000 to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 27th day of January 2011.

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW1 — 11-3-2010 - Sakthivel

List of witnesses examined for the respondent :

RW1 — 18-11-2010 - Ananda Baskar

List of exhibits marked for the petitioner :

Ex.P1 — Letter by the petitioner to the Conciliation Officer, dated 11-7-2003.

Ex.P2 — Failure Report, dated 19-12-2003

Ex.P3 — Certificate by the management, dated 13-5-2003

Ex.P4 — Provident fund receipts 4 in Nos.

List of exhibits marked for the respondent :

Ex.R1 — Copy of the Wage Register for the period from September 2001 to October 2002.

Ex.R2 — Copy of the Register of Muster Roll September 2001 to October 2002.

Ex.R3 — Notice calling for explanation, dated 27-7-1999

Ex.R4 — Apology letter submitted by the petitioner

Ex.R5 — Apology letter, dated 26-4-2002

Ex.R6 — Explanation given by Vibushnan

Ex.R7 — Explanation given by L. Sankar

Ex.R8 — Explanation given by A. Moorthy

Ex.R9 — Apology letter, dated 7-4-2000

Ex.R10 — Notice issued to the petitioner, dated 4-8-2000

Ex.R11 — Termination order, dated 29-7-2002

T. MOHANDASS,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 131/AIL/Lab./J/2011, dated 5th July 2011)

NOTIFICATION

Whereas, the Award in I.D. No. 11/2007, dated 31-1-2011 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. M.R.F. Limited, Puducherry and Thiru T. Ariputhiran (Emp. No. 90101) over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

N. APPA RAO,
Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

*Present : Thiru T. MOHANDASS, M.A., M.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.*

Monday, the 31st day of January 2011

I. D. No. 11/2007

*T. Ariputhiran (Emp. No. 90101)
S/o. M. Thirumal,
Mandagapattu Post,
Villupuram.*

*.. Petitioner/
Workman.*

Versus

*The Management of M.R.F. Limited,
P.B. No.1, Erikkam Village,
Nettapakkam Commune,
Pondicherry-605 106.*

*.. Respondent/
Management*

This petition coming before me for final hearing on 31-1-2011 in the presence of Thiru T. Gunasegaran, advocate for the petitioner, Thiruvalargal L. Swaminathan

and I. Ilankumar, advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No. 49/2007/Lab./AIL/J, dated 14-3-2007, of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

- (1) Whether the non-employment of Mr. T. Ariputhiran by the management of M/s. M.R.F. Limited, Puducherry is justified or not?
- (2) If not what relief, he is entitled to?
- (3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that the respondent is a Limited Company registered under the Indian Companies Act, which manufactures tyres of all kinds and started its commercial production in the year 1998. At the time of starting its production, all the workers were designated as "Trainees/Apprentices" for a paltry wage of ₹ 40 per day and the workers who had ITI qualification were paid ₹ 50 per day. The workers were not given the benefits of E.S.I. coverage or the benefits of Provident Fund coverage. After six months, few workers were given written order of appointment designating them as "Trainees". The management adopted the method of designation as "Trainees/Apprentices" only to deny the benefits of labour welfare legislations and utilising the insecurity in employment, it extracted more than the maximum possible workload from the workers. After two years in or about the year 2001, the workers by name Thiruvalargal (1) B. Sakthivel, (2) K. Deivasigamani, (3) V. Balamurugan, (4) S. Jayaprakash, (5) S. Bharathiraja, (6) P. Anbouradjou (7) C. Kumaravelan, (8) P. Pachyappan, (9) A. Sivanandhane, (10) S. Srinivasan and (11) P. Mohan who had ITI qualification, were issued orders placing them on probation. The management did not have certified standing orders at the time of starting its production. But after about 3 years on 11-6-2001, the management handpicked certain workers to come to the Labour Department to give their consent for the certification of the draft of their standing orders. At that time, the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr. V. Prakash, advocate was selected as a President. On knowing the fact of formation of union, the management

terminated workers, who joined union, resulting in filing the WP. No. 20270/2001 and WP No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the Writ Petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending.

The management thereafter set up its nominees to form a trade union and genuine union filing WP. No. 20/2002 sought for a direction not to register the union. During the pendency of the said Writ Petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said Writ Petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar to Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed WP. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the Writ Appeal. The petitioner was one such reinstated workers, who has been the member of the M.R.F. Thozhilalar Sangam.

The petitioner joined the service in the respondent's factory on 9-6-2000 orally and subsequently order of appointment was given on 4-12-2000 designating him as "Apprentice" for a period of 6 months. Though he was orally designated as "Apprentice" he was actually doing the work of production as any other workers. In fact, all workers were given orders on the expiry of first 6 months period, except 4 workmen including the petitioner. Thereafter no order was communicated to him and when he was terminated for the first time for his membership of the M.R.F. Thozhilalar Sangam, no written order was issued on being reinstated under the orders of Hon'ble High Court order dated 10-6-2002.

The management through its handpicked men, having formed a trade union and having obtained registration for the same and having affiliated with the INTUC, the labour wing of the ruling Congress Party in Pondicherry, entered into a so called settlement with the said outfit for certification of the standing orders, which standing orders do not apply for the petitioner as the same is as a result of a collusive arrangement with the handpicked men of the opposite party management and same is

violated by fraud, collusion and is not a genuine settlement entered into with genuine collective bargaining agent, truly representing the workers. In any event the said settlement being one under section 18(1) of the Industrial Disputes Act, it is not binding on the union in which the petitioner is a member.

The members of M.R.F. Thozhilalar Sangam having been subjected to hostile discrimination and ill treatment and the management unabashedly continuing to flout labour welfare legislation and employing contract labours in direct manufacturing process illegally, the said union decided should sit on a protest fast, to ensure protection of freedom of association of the workers. Accordingly Mr.V.Prakash, advocate, the President of the petitioner's union, sat on a fast at the respondent's factory for consecutive 5 days from 11-2-2004 to 15-2-2004. The petitioner was one among the workers who was active in the union activities relating to the fast that took place on 15-2-2004. The petitioner was issued memo dated 6-1-2004. The petitioner's request for its Tamil translation through his letter dated 13-1-2004 and he was issued the Tamil translation and the petitioner refused the charges through his letter dated 1-3-2004. The petitioner was suspended and the petitioner was issued a show cause notice on 23-1-2004 and an additional show cause memo was issued on 25-1-2004, for which petitioner replied through reply letter. The petitioner was issued an enquiry notice dated 24-2-2004 stating that the enquiry would be held on 1-3-2004 wherein it was stated that the petitioner's reply was not satisfactory and the management had appointed Mr. S. Karthikeyan as an Enquiry Officer and instituted an enquiry. After completion of enquiry, the Enquiry Officer gave his findings on 9-12-2003 accepting the management witnesses deposition and holding it against the petitioner for not examining any witness on his behalf. The management not accepting the petitioner's explanation issued an order of dismissal dated 4-5-2004 to the petitioner. Against the said order of dismissal, the petitioner raised an industrial dispute under section 2(A) of the Industrial Disputes Act. The management filed its counter statement and the Conciliation Officer issued the conciliation failure report on 9-10-2006 resulting in the present reference. The impugned dismissal of the petitioner dated 15-6-2004 is illegal and unjustified. Hence, the petitioner prays to pass an order directing the respondent-management to reinstate the petitioner in service with back wages, continuity of service and other consequential benefits and award costs.

3. The respondent filed a common counter statement and contended that the petition is not maintainable either on law or on facts. The various allegations and contentions stated in the claim petition are factually incorrect and the petitioner only to achieve unlawful gains through suppression of material facts had approached the Labour Court with unclean hands. The factory at Pondicherry commenced trial production in the year 1998 and manufactured various radial tyres. The factory which started with 12 machines has slowly progressed to install nearly 131 machines as on date. As the manufacture of radial tyres is highly technical and is a complicated one and uses logistics control, the workmen takes time to learn the various skills on each machine and the workers have been inducted in phases over the past years. In order to give employment opportunity to the villagers, the respondent recruited the persons from nearby village of Puducherry who do not possess qualification beyond 12th standard. Only raw hands are recruited as Apprentices. The respondent denies that allegation with regard to E.S.I. and Provident Fund coverage. As soon as the E.S.I. notification was given all the employees including the Trainees/Apprentices. The Assistant Director of Employment and Training vested with powers convened a meeting of the workmen on 19-9-2001 at the factory premises for the purpose of electing a workmen representative for certification of standing orders with their comments and corrections. The respondent management had engaged a maximum of 258 workmen out of which 16 are probationers, 140 are apprentices and 102 are casuals who are kept under observation to verify their willingness and to ascertain their basic aptitude. On and from 3-1-2001, an agitation commenced in the form of various illegal agitations and undesirable activities. By that time the probationary period of 6 probationers came to an end due to efflux of time and the training of 43 apprentices were determined and with no other alternative 102 casual services were dispensed with. Only at this backdrop, the so-called M.R.F. Thozhilalargal Sangam had filed Writ Petition in WP. No. 20270/2001 and WP. No. 20591/2001 and the respondent had filed Writ Appeals against the orders passed in the Writ Petitions in WA. No. 2043/2002 and WA. No. 2044/2002 and the same is pending. In the said Writ Appeals, the Hon'ble High Court, Madras had granted stay of reinstating the terminated 49 workmen and other workmen were taken back at their original category and at that time only, the petitioner herein had been reinstated. The respondent further denies that the

wages paid are less than the minimum wages. The respondent management always abides by the labour laws and therefore the settlement entered with the union which enjoyed majority cannot be questioned by an isolated person.

The petitioner was suspended from service on 23-1-2004 in contemplation of Disciplinary Proceedings and the petitioner was issued with a show cause notice on 25-1-2004 followed by an enquiry. After receipt of enquiry report dated 5-6-2004, the respondent management completely perused the report and was subjectively satisfied that the Enquiry Officer had conducted the enquiry by permitting the petitioner to examine his two witnesses apart from his own deposition. The Enquiry Officer had submitted the enquiry report on 5-6-2004 with an observation that the charges framed against the petitioner are proved beyond reasonable doubt. The second show cause notice was issued on 7-6-2004 to the petitioner alongwith enquiry report and the petitioner has submitted his explanation on 12-6-2004. Based on the past records and enquiry report, the management had arrayed to a conclusion that the petitioner herein is not a fit person to be permitted to continue in service and therefore passed an order of dismissal dated 15-6-2004. The grounds (1) to (6) mentioned in the petition are all vague and a detailed reply has been submitted in the Conciliation Proceedings which may be treated as part and parcel of this counter statement. Grounds (7) that the reliance on the past records are baseless and without enquiry and hence the past records are to be rejected is stoutly denied by the respondent management. With regard to grounds (8) to (10), the respondent management has its own certified standing orders and the accusation of victimisation does not at all arise even remotely to the fact and circumstances of the case as no prejudice has been passed to the claim petitioner till date. The petitioner has no *locus standi* to claim reinstatement even remotely as the respondent management had acted in a fair and judicious manner based on the outcome of the enquiry report dated 5-6-2004 and to the past record of the claim petitioner which can be proved through documentary evidence.

4. Now the point for determination is :

"Whether the non-employment of Mr. T. Ariputhiran by the management of M/s. M.R.F. Limited, Puducherry?"

5. On the point:

The contention of the petitioner is that the workers decided to have a trade union to protect their rights and they have also started a union in the name of M.R.F. Thozhilalar Sangam and Mr.V. Prakash, advocate was

selected as a President. On knowing the fact of formation of union, the management terminated workers, who joined union, resulting in filing the WP. No. 20270/2001 and WP. No. 20591/2001 against such termination. The Hon'ble Madras High Court allowed the Writ Petitions and the management's Writ Appeals Nos. 2043 and 2044 of 2002 against the said petitions, which is still pending. The management thereafter set up its nominees to form a trade union and genuine union filing WP. No. 20/2002 sought for a direction not to register the union. During the pendency of the said Writ Petition, within few days after filing of the same and after notice was ordered, the management had its outfit registered under name of the "M.R.F. Employees Union" and a Writ Petition No. 1769/2002 was filed against the said registration. In the said Writ Petition, the Hon'ble High Court ordered the workers to make a representation to the Registrar of Trade Unions and directed the Registrar of Trade Unions to enquire and pass orders thereon. The Registrar of Trade Unions rejected the said representation against which the petitioner's union filed WP. No. 24183/2005 and the same has been admitted and is pending. In the meantime, as per the direction, the management reinstated the workers except 49 for whose reinstatement, the Division Bench ordered stay in the Writ Appeal.

6. The contention of the respondent is that the petitioner had chosen only to elaborate about the formation of M.R.F. Thozhilalargal Sangam led by its Union President V. Prakash and more specifically concentrated about the orders passed by the Hon'ble High Court, Madras in WP. No. 20270/2001, WP. No. 20591/2001 and WP. No.19/2002 dated 10-6-2002, though the petitioner is not a party to the writ proceedings. He further submitted that the Division Bench of Hon'ble High Court, Madras by its order dated 4-1-2008 in WA. No. 2043 and 2044/2002 was pleased to modify the order in WP.No. 20591/2001 and WP. No. 19/2002 to the extent that the dismissed/ terminated employees had to approach the Labour Court or the Industrial Tribunal. The learned counsel for the respondent further submitted that in S.L.P. No.6004-6006/2009 against the judgment and order dated 4-1-2008 in WA. Nos. 2043 and 2044/2008 of Hon'ble High Court, Madras was preferred by the M.R.F. Thozilalargal Sangam and the Hon'ble Supreme Court by its record of proceedings dismissed the S.L.P. on 12-5-2009.

7. Neither the petitioner nor the respondent has produced the copies of the said judgments of the Hon'ble Supreme Court and Hon'ble High Court, Madras to come to the just decision of the case. In the

absence of sufficient records, this court is not in a position to accept the contention of either the petitioner or the respondent.

8. The contention of the petitioner is that he joined the service of the Opposite Party management on 9-6-2000 and he was employed without any written order of appointment being given to him and the oral order of appointment was given on 4-12-2000 designating him as apprentice for a period of six months. He further submitted that all the workers were given orders on the expiry of first six months period, except four workmen including him and thereafter no order was communicated to him.

9. On the side of the respondent, it is contended that the petitioner was a Trainee and no order in writing was issued to him appointing him as a Probationer as contemplated under the Certified Standing Orders, which is normally followed after completion of training period and since the petitioner was a Trainee, he cannot have any say regarding his appointment of Trainee and continuance of Trainee which is in conformity with clause 3.6 of Certified Standing Orders.

10. Clause 3.6 deals with Apprenticeship under the Apprenticeship Act, 1961, which runs as follows:-

“..... Company Training Scheme/Trainee means a learner who is paid stipend and whose terms and conditions are governed by the provisions of the Apprentices Act, 1961 and the amendments thereof or one who is recruited to undergo Apprenticeship as per Company’s scheme either as Production Apprentice or Engineering Apprentice or apprentice for Service Department. The Apprenticeship period will be for 42 months comprising 4 spells, the first spell is for six months and the remaining 3 spells each are for one year duration and the company is not obliged to employ after the conclusion of their apprenticeship. At the expiry of any spell each training will be assessed and evaluated and on satisfactory completion of the training in each spell, the trainee will be put on to training for next spell. On completion of the total apprenticeship period the services will stand automatically terminated. However, they may be considered for the post of Probationer on satisfactory completion of training by the company at its discretion depending upon the exigencies and vacancy position. The status as an apprentice will not change until it is changed by the company in writing.....”

11. As per Clause 3.6 of Apprenticeship under the Apprenticeship Act, 1961, the apprenticeship period will be 42 months comprising four spells, the first spell is six months and the remaining three spells each are for one year. It is nowhere stated in the appointment order that training is not necessary for the trainees. Hence, the respondent management should have issued the appointment order to the petitioner, designating him as Trainee. Since both the petitioner and the respondent have admitted that the petitioner was Trainee at the time of terminating his service, much importance cannot be given for the abovesaid point.

12. The next contention of the petitioner is that since he was active member in the M.R.F. Thozhilalar Sangam and since he was participated in the activities on the said union, he was terminated from service by raising false allegations against him.

13. *Per contra*, the contention of the respondent is that during the period of training, the petitioner had indulged in acts of indiscipline, insubordination, using filthy and obnoxious language, aiding and abetting the co-workers to squat, instigating the other workers were all proved in the enquiry proceedings and hence he was terminated from service. In order to support his claim, the learned counsel for the respondent has relied upon the following decisions:-

2011 LLR 51

Dismissal from service – Of the appellant Manager (Sales) for threatening and abusing his superior – He was dismissed from service for misconduct duly proved in disciplinary enquiry – His writ petition against punishment was dismissed – Hence this writ appeal – In view of gravity of charge against the appellant, the punishment of dismissal cannot be stated to be disproportionate to the misconduct – Principles of natural justice were followed and proper opportunity was given to him – No ground found to interfere with the order of dismissal from service as upheld by learned single Judge.

2010 LLR 600

Industrial Disputes Act, 1947 – Section 11A, Power of the Labour Court/Industrial Tribunal to give appropriate relief in cases of dismissal or discharge of the workman – Well settled law – Power under section 11 is not an appellate power – Exercise only when punishment imposed is shockingly disproportionate to charges proved in Departmental Inquiry – Punishment of putting him six stages down in pay scale for charge of misappropriation – Not shockingly disproportionate to the charges proved.

2010 LLR 744

Constitution of India, 1950 – Enquiry – Validity of – Principles of natural justice have been followed by the Enquiry Officer – Enquiry cannot be faulted on any ground and the findings are in no manner, perverse – No case is made out for interference with the said orders under Article 226 of the Constitution of India.

2010 LLR 993

Departmental proceedings – Judicial review of – Scope of – Judicial review is matters of disciplinary proceedings – Is to find out whether the findings are perverse or unreasonable – Writ court recorded that there is sufficient evidence to support the charges – There is no legal or other infirmity in the order under appeal – Appeal dismissed.

Departmental proceedings – Enquiry report not furnished – In fact the disciplinary authority has not given any findings of its own in respect of charges levelled – Enquiry report annexed with the second show cause notice - No prejudice caused to appellant.

(2008) 5 MLJ 733

When the charge of habitual absence against the employee was proved and the competent authority/ employer imposed a proper punishment, it is not open to the Central Administrative Tribunal to interfere with the quantum of punishment on the premises that the charge of habitual absence of the employee was not grave. Such order of the CAT is clearly erroneous and is liable to be set aside.

(2008)3 MLJ 959 (SC)

Punishment – Of removal from service – Imposed on respondent/teacher on ground of misconduct as he physically assaulted Principal of School – Order of Tribunal quashing removal order and reducing punishment as being disproportionate – Same upheld by High Court in writ petition – Appeal – No good ground for Tribunal to interfere with punishment of removal imposed on respondent – Impugned order of High Court and Tribunal set aside – Appeal allowed.

2005 (2) CTC 730

..... Workman should have pleaded before employer at second show cause notice stage that proposed punishment was harsh and disproportionate to proved misconduct and that employer acted with *mala fide* – (i) Reading of various decisions would show that the following principles of law is laid down; The Tribunal is empowered to enquiry as to whether the enquiry conducted was fair and any principles of natural justice has been violated in the conduct of the enquiry; (ii) The Tribunal is

empowered to enquiry as to whether the management *bona fide* came to the conclusion that the dismissal another punishment for the one which is sought to be meted out except when it finds that action of the management is shockingly disproportionate..... Enquiry was fair and proper and charges were proved and the Tribunal should have approved the action of the employer in dismissing workman.

2001 LLR 587

Industrial Disputes Act, 1947 – Section 22 – Prohibition of strikes and lock-outs – Strike in a hospital where public utility services are rendered will contravene the provisions of section 22 – Such a strike would be *per se* illegal – Strike has been totally prohibited in utility service by the notification issued by the State Government – The strike resorted to by the workmen of the hospital is in contravention of the said prohibitory orders of the State Government issued under section 22 of the Industrial Disputes Act and, therefore, this strike is *per se* illegal as it violates the said notification and the prohibition orders.

Dismissal – Of hospital employees for resorting to and instigation for illegal strike - Before initiating disciplinary proceedings, it is not necessary that such a strike be declared as illegal.

2001 LLR 1213

Dismissal from service of Assistant Branch Manager – Who was committed various acts of omission and commission during the period of his posting as enumerated in charge sheet – Disciplinary proceedings initiated – Disciplinary authority dismissed the petitioner from service on the basis of enquiry report – Appellate authority by a reasoned order rejected the appeal – Full opportunity is defend himself given in the enquiry – Hence, no illegality proceedings or order –Dismissal from service of petitioner held not illegal.

2001 LLR 401 (MP HC)

Dismissal of bus conductor - Checking staff found that out of 23 passengers travelling in the bus 6 were travelling without ticket – The bus has covered 34 kms. From the place wherefrom 6 passengers had boarded the bus – Enquiry held – Charges proved – Dismissal of the conductor ordered – Challenged – Labour Court vitiated enquiry – Ordered reinstatement without back wages – Industrial Court directed reinstatement of the conductor with full back wages – Writ petition by the management – Corporation – High Court quashed the orders of Labour Court and Industrial Court – Dismissal as ordered by the Corporation upheld – A dishonest person could not be allowed to continue in employment – The conductor has lost the confidence.

2001 LLR 1154 (SC)

..... In such an event if the appellant – Corporation loses its confidence *vis-a-vis* in the employee it will be neither proper nor fair on the part of the court to substitute the finding and confidence of the employee with that of its own by allowing reinstatement – The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment – Also High Court was in error in dismissing the writ summarily – The termination order as passed by the Appellant Corporation is restored.

2001 LLR 1237(Kar. HC)

Loss of confidence – When a bus conductor misappropriates money as collected – His reinstatement as awarded by the Labour Court and Learned Single Judge – Cannot be sustained.

2010 LLR 913 (Guj. HC)

Dismissal – From service of bus conductor for misconduct of receiving fare and not issuing tickets – Challenged by petitioner – Conductor – For proved misconduct – High Court is of considered opinion – Punishment of dismissal is not in any way disproportionate to the charges levelled against the conductor, particularly taking into account the past record of service – There cannot be any misplaced sympathy in such matters.

2009(5)CTC 160

Departmental Proceedings – Punishment – Past misconduct and record of service – Relevancy of – No need to mention in notice calling for further representation.

(2008) 3 SCC 310

Service law – Probation/Probationer – Termination – Grounds – Unsatisfactory probation – Authority competent to direct termination in case of – Need to give reasons/explanation, if any – Held, assessment of probation has to be made by appointing authority itself – The authority is however not required to give reason for termination except to inform employee that his performance was found unsatisfactory.

14. In order to prove the misconduct of the petitioner, the respondent has marked the complaints received from the Production Supervisor and Shift Foreman as Ex.R3 to Ex.R5 and the warning letters issued to the petitioner as Ex.R14 and Ex.R16. Ex.R3 to Ex.R5 would show that he prevented the workers from making tyres and left the work spot without obtaining permission from his superiors. Ex.R14 and Ex.R16 warning letters were issued to the petitioner for leaving the work spot without getting permission. The said documents are not challenged by the petitioner.

15. The final contention of the learned counsel for the petitioner is that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner and he has conducted the domestic enquiry in a biased manner without giving any opportunity, which are entitled for the delinquents as per law as well as by the principles of natural justice and moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings and in fact the petitioner has not committed any misconduct as alleged by the respondent, but the management had taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

16. The learned counsel for the respondent would submit that they have followed the principles of natural justice while charging the petitioner and conducting the domestic enquiry by a neutral Inquiry Officer and on proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice and even in the domestic enquiry, the petitioner had been allowed to be assisted by their co-employee. The petitioner has been given fair chance to cross-examine the witnesses and the Inquiry Officer on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved and on the conclusion of the report submitted by the Inquiry Officer the petitioner has been terminated from his services by way of punishment for the misconduct committed by him and hence, there is no scope to intervene in the order of this management by the Labour Court.

17. At this stage when I peruse the domestic enquiry report which has been marked as Ex.R8, relating to the petitioner, we can understand that the petitioner was advised to participate in the enquiry and the petitioner has participated in the enquiry. On the side of the respondent, four witnesses were examined and they were cross examined by the petitioner. On the side of the petitioner, one witness was examined and no document was marked. The enquiry was closed and on the side of the petitioner, the argument was submitted on 28-5-2004. On the same day, on the side of respondent, the argument was submitted. The enquiry was completed on 28-5-2004 and based on the evidence available on

records, the Enquiry Officer found that the charges framed against the petitioner are proved and accordingly, he submitted his report to the respondent management. Then based on the enquiry report, the respondent management issued a second show cause notice under Ex.R9 calling for his explanation. The petitioner submitted his written explanation under Ex.R10 and since the explanation submitted by the petitioner was not satisfactory, the respondent management dismissed him from service.

18. Hence on perusal of Ex.R8 and other documents filed on the side of the respondent, it is evident that the petitioner was given fair opportunity to defend his case and the respondent has correctly followed the procedure for conducting the domestic enquiry as contemplated under labour law. Hence, the enquiry conducted by the respondent management is fair and proper.

19. The learned counsel for the respondent has pointed out the Apprenticeship order, which had been issued to the workers of the respondent management, which runs as follows:-

(a) You will be subject to the Certified Standing Orders and regulations as and when become applicable or amended or extended from time to time.

(b) On completion of the apprenticeship period, your services with us as an apprentice will stand automatically terminated,

(c) Should be guilty of any misconduct during the period of apprenticeship, you will be summarily dismissed from apprenticeship without notice or compensation *in lieu* of notice.

(d) The company does not guarantee any automatic confirmation in services at the end of apprenticeship period.

20. The above orders state that on completion of the apprenticeship period, the petitioners' services will stand automatically terminated. Hence, it is the implied factum that the petitioner cannot claim right over the appointment, since the appointment itself is not a permanent one or does not guarantee any automatic confirmation in service. In this case, the petitioner on accepting the above terms and conditions of the order of respondent company he has joined as apprentice and during the period of apprentice, he had committed misconducts such as indiscipline, insubordination aiding and abetting the co-workers to squat, instigating the other workers, which were proved in the domestic

enquiry, conducted by the respondent management and hence, the respondent has taken action against the petitioner by terminating him from service, which is not against law.

21. The misconducts committed by the petitioner have been proved by way of conducting the enquiry and the said misconducts are very grave in nature during the period of apprentice. The respondent management has rightly taken the decision by terminating him from service. The decisions cited by the learned counsel for the respondent are squarely applicable to the present facts and circumstances of the case. However, the documents marked under Ex.P1 to Ex.P8 on the side of the petitioner are not supported to his claim. Hence, the petitioner is not entitled for reinstatement with continuity of service and back wages. But at the same time, the petitioner has rendered service in the respondent company for more than three years. He was hailing from poor family and he had been walking to this court for the past four years. Hence, considering the age of the petitioner and his family circumstances, the respondent is directed to pay a monetary compensation of ₹ 10,000 to the petitioner. Accordingly, this point is answered.

22. In the result, the petitioner is not entitled for reinstatement with continuity of service and back wages. However, the respondent is directed to pay a sum of ₹ 10,000 towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 31st day of January 2011.

T. MOHANDASS
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

List of witnesses examined for the petitioner :

PW1 — 22-10-2010 T. Ariputhiran

List of witnesses examined for the respondent : Nil.

List of exhibits marked for the petitioner:

Ex.P1 — 23-1-2004	Suspension pending enquiry
Ex.P2 — 25-1-2004	Additional Show cause notice
Ex.P3 — -	Explanation given by the petitioner.
Ex.P4 — 24-2-2004	Enquiry notice
Ex.P5 — 7-6-2004	Second show cause notice
Ex.P6 — 12-6-2004	Explanations given by the petitioner.

- Ex.P7 — 15-6-2004 Dismissal order
 Ex.P8 — 14-3-2007 Failure report issued by the Labour Officer (Conciliation), Pondicherry.

List of exhibits marked for the respondent by consent:

- Ex.R1 — 6-1-2004 Show cause notice with its Tamil translation, marked by consent.
 Ex.R2 — 1-3-2004 Written explanation, marked by consent.
 Ex.R3 — 22-1-2004 Complaint from the Production Supervisor, marked by consent.
 Ex.R4 — 22-1-2004 Complaint from the Shift Foreman, marked by consent.
 Ex.R5 — 22-1-2004 Complaint from the Production Supervisor, marked by consent.
 Ex.R6 — 25-1-2004 Additional show cause notice marked by consent.
 Ex.R7 — 19-2-2004 Written explanation marked by consent.
 Ex.R8 — 5-6-2004 Enquiry report, marked by consent.
 Ex.R9 — 7-6-2004 Second show cause notice marked by consent.
 Ex.R10 — 12-6-2004 Written explanation, marked by consent.
 Ex.R11 — - Petition filed under Section 2A before the Labour Officer (Conciliation), Puducherry, marked by consent.
 Ex.R12 — 24-7-2006 Counter statement filed by the respondent/management, marked by consent.
 Ex.R13 — - Relevant Tamil version of the Certified Standing Orders, marked by consent.
 Ex.R14 — 2-11-2003 Warning notice marked by consent.
 Ex.R15 — 19-11-2003 Copy of the unclaimed RPAD cover sent to the petitioner, marked by consent.
 Ex.R16 — 5-1-2004 Severe warning letter, marked by consent.
 Ex.R17 — 6-1-2004 Copy of the unclaimed RPAD cover sent to the petitioner, marked by consent.

T. MOHANDASS
 II Additional District Judge,
 Presiding Officer, Labour Court,
 Pondicherry.

GOVERNMENT OF PUDUCHERRY

FINANCE DEPARTMENT

(G.O. Ms. No. 36/F2/A2/2011, dated 11th July 2011)

NOTIFICATION

On attaining the age of superannuation, Tmt. Surya Prabha Prakash, Junior Accounts Officer, Office of the Deputy Director (Sports and Youth Services), Education Department, Puducherry, is admitted into retirement on the afternoon of 31-7-2011.

(By order)

R. SMITHA,
 Joint Secretary to Government (Finance).

GOVERNMENT OF PUDUCHERRY

**DEPARTMENT OF PERSONNEL AND
 ADMINISTRATIVE REFORMS (PERSONNEL WING)**

No. A-34012/14/2008-DP&AR (Exam.).

Puducherry, the 13th July 2011.

NOTIFICATION

The following candidates are declared to have passed the Common General Departmental Test for Ministerial Staff held on 9-10-2010.

N.B. : (i) Names are given in alphabetical order.

(ii) Requests from unsuccessful candidates as to the cause of failure or revaluation of answer papers will not be complied with.

Sl. No.	Name, designation and official address of the candidate (1)	(2)
Thiru/Tmt./Selvi :		
1	Adhiseshan, A., Stenographer Grade-III, Chief Secretariat, Puducherry.	
2	Albert, N., Lower Division Clerk, Legal Services Authority (State Authority), Puducherry.	
3	Amudha Rani, C., Lower Division Clerk, Office of the Executive Engineer-V, Electricity Department, Karaikal.	
4	Anandalakshmi, S., Stenographer Grade-III, Adi-Dravidar Welfare Department, Puducherry.	
5	Arokia Jayaseelan, S., Stenographer Grade-III, Planning and Research Department, Karaikal (On deputation to Pondicherry Power Corporation Limited, Karaikal).	
6	Arokiamary, A., Stenographer Grade-III, Directorate of Health and Family Welfare Services, Puducherry.	